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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,577

09/22/2005

Sylvie Pridmore-Merten

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3814

29157 7590 01/08/2009  
BELL, BOYD & LLOYD LLP  
P.O. Box 1135  
CHICAGO, IL 60690

EXAMINER

CLARK, AMY LYNN

ART UNIT

PAPER NUMBER

1655

NOTIFICATION DATE

DELIVERY MODE

01/08/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,577	<b>Applicant(s)</b> PRIDMORE-MERTEN ET AL.	
	<b>Examiner</b> Amy L. Clark	<b>Art Unit</b> 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 9-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

Acknowledgment is made of the receipt and entry of the amendment filed on 10/02/2008 with the amendment of claims 1, 2 and 6.

### ***Election/Restrictions***

This application contains claims 9-21 drawn to an invention nonelected with traverse in the reply filed on 04/21/2008. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-8 are currently under examination.**

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucas et al. (A, US Patent Number: 4753926). Newly applied as necessitated by amendment.

Lucas teaches an infant food, which reads on a pharmaceutical, a dietary supplement for animal and human consumption (since humans are a type of animal) and also reads on a nutritionally complete human food, comprising B-vitamins, taurine

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and carnitine, which are premixed before adding to other ingredients, which reads on admixture. Lucas further teaches that the other ingredients are milk and vegetable oil, which are both orally acceptable carriers.

Although Lucas does not expressly teach that carnitine stimulates energy metabolism or that taurine improves hair or coat quality of a human or an animal, the claimed functional properties are inherent to the composition taught by Lucas because the ingredients, the combination of ingredients and the route of administration for the delivery of the ingredients taught by Lucas are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, a composition comprising an admixture of carnitine and taurine would be expected to have the functional effects of stimulating energy metabolism and improving hair or coat quality of a human or an animal, as claimed by Applicants.

Therefore, the reference anticipates the claimed subject matter.

Claims 1-8 remain rejected under 35 U.S.C. 102(a) as being anticipated by Hamilton (N\*, WO 0211717 A1, Please note that the Examiner has provided a full copy of this reference along with this Office Action).

This rejection is maintained for reasons of record set forth in the paper mailed on 07/02/2008. Applicant's arguments have been thoroughly considered, but the rejection remains the same for the reasons set forth in the previous Office action and for the reasons set forth below.

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Hamilton teaches a skin care composition comprising an antioxidant and carnitine effective against hair loss and capable of stimulating hair growth, which reads on topical pharmaceutical, comprising carnitine in an amount of 1 w/w % and creatine in an amount of 0.9 w/w % and further comprising an antioxidant, wherein the antioxidant is  $\alpha$ -lipoic acid in an amount of 1 w/w % and deionized water, which reads on an orally acceptable carrier. Hamilton further teaches that these ingredients are mixed together, which reads on an admixture (See page 14, lines 29-34).

Therefore, the reference anticipates the instantly claimed invention.

Applicant argues that Hamilton fails to disclose or suggest a composition comprising an effective amount of an ingredient in an amount sufficient to improve hair or coat quality of a human or an animal, in an orally acceptable carrier as required, in part, by independent Claim 1. Applicant further argues that Hamilton is directed to cosmetic and skin care compositions with carrier examples including creams, lotions and sunscreen. Applicant further argues that Hamilton states that its "inventive combination," when applied "topically," slows skin impairments and skin aging and though Hamilton teaches that certain individual components of the "inventive combination" could be used in diets, supplements and nutritional therapies, Hamilton never teaches or suggests a composition that is orally acceptable. Applicants further argue that Applicants have found that when the composition of Claim 1 is orally administered, the composition can contain carriers and excipients that are suitable for delivering the ingredient and associated molecule to the target tissue to allow the

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molecules to stimulate energy metabolism to improve hair and coat quality and condition as required by the claims.

However, this is not found persuasive because Applicants' claims do not include the limitation that the composition is to be administered orally. Secondly, Hamilton teaches that the composition may be taken internally as part of diets, supplements and nutritional therapies. Finally, with regards to Applicants' assertion that the oral administration of the claimed composition that the composition has the effect of stimulate energy metabolism to improve hair and coat quality and condition as required by the claims, please note that the claims do not provide any amounts of the ingredients that have these effects. Absent a range or a specific amount of each ingredient, the combination of the claimed ingredients, which are taught by Hamilton, would be expected to have the properties claimed by Applicants, particularly since Hamilton teaches that these ingredients are mixed together, which reads on an admixture.

Any previous rejections not addressed above have been overcome by Applicant's amendment to the claims and have, therefore, been withdrawn.

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***Conclusion***

**No claims are allowed.**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Amy L. Clark, AU 1655  
January 2, 2009

/Christopher R. Tate/  
Primary Examiner, Art Unit 1655